IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.7741/07
Smt. Soni Devi & Ors. Vs. Gopal Lal & Ors.

4.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri N.K. Mishra for petitioner.

The petitioner has challenged the order dated 10.9.2007 whereby the learned Additional District Judge No.2, Jaipur City, Jaipur while allowing the appeal of the respondent no.1 has reversed the order dated 9.8.2007 passed by Additional Civil Judge (JD) No.1, Jaipur city, Jaipur. The first court had rejected the application of the plaintiff filed under Section 151. The plaintiff filed the application inter alia on the premise that the notice of the suit was issued to

the defendant, he taking the advantage of the absence of the plaintiff demolished the wall situated on the northern side of the house with an intention to expand his construction over that land. Thereafter Court on 25.7.2007 passed the order restraining the defendant not to further demolish the wall in question. The Court on the application of the plaintiff appointed a Commissioner on 28.7.2007. The petitioner in the meantime applied for the amendment of the suit for incorporating the prayer for mandatory injunction. Though the Court passed order for appointing one Advocate G.K. Sharma as Commissioner on 28.7.2007 but that order was amended on 30.7.2007 so as to appoint Shri Narendra Kumar Sharma as Commissioner in his place. The defendant

taking advantage of this fact further completely demolished the wall on 29.7.2007 and started fresh construction on that very day which continued till late in the night and also in the morning of 30.7.2007. The Commissioner inspected the site on 20.7.2007 in which he reported that fresh constructions have been raised by the defendant and by such construction raised by the defendant, the way which was earlier available to the petitioner has now been blocked. In the application therefore the prayer was made for mandatory direction for demolition of the freshly constructed wall.

The learned trial court rejected the application holding that as to what was the status of the disputed property on the date of filing of the suit would

be determined only on the basis of evidence led by the parties. There was a street on the southern side of the house of the plaintiff and a public road on the eastern side. Even the way of the plaintiff was opening from northern side, which has been closed by the wall, still the way was available to him on other two sides. The application was therefore rejected on 9.8.2007. The plaintiff non-petitioner filed an appeal against the said order before the learned first appellate court, who reversed the order passed by the trial court and directed the defendant to remove the freshly made constructions within seven days and upon his failure to do so, liberty was given to the plaintiff to demolish the wall in question with due permission from the

Court and construct the stairs afresh.

Shri N.K. Mishra, the learned counsel for the petitioner has argued that the learned first appellate court has erred in law in interfering with the judgment of the trial court. It was argued that from the report of the Commissioner and photographs, it could not be ascertained that the disputed constructions were freshly raised. In fact, they were very old constructions. It was argued that what was the status of the property in dispute and the construction thereupon on the date of filing of the suit could be determined only on the basis of evidence led by the parties. The direction of this nature could not be given by the appellate court against the plaintiff as there is no

alternative way towards sought and east of the house of the petitioner. This being an error apparent on the face of the record is liable to be corrected by this Court in exercise of its writ jurisdiction under Article 227 of the Constitution of India.

Having heard the learned counsel for the petitioner, I find that the facts of this case clearly depict that the defendant has admitted to overreach the process of Court even after service of the notice on him and appointment of the Court Commissioner. He indulged in raising fresh constructions which on inspection by the Commissioner were found to be newly raised. The learned first appellate court found that it was in exceptional cases where the Court could

by positive order direct restoration of the status of the property prior to the date of filing the suit. As per the report of the Commissioner, there was no other way available for entering in the house of the respondent and this fact was also borne out from perusal of the photographs. In fact, the plaintiff-respondent had the stairs leading to his house at the place where the wall has been newly constructed by the petitioner. The learned trial court even noted that the defendant did not contest the position that the construction was raised but his contention was that he has not demolished any old construction nor has he raised any new construction and that whatever constructions were available on ground on 30.7.2007 when he purchased the

disputed property were maintained. The learned appellate court found that on the date of filing of the suit, there was a way in front of the latrine constructed on south-eastern side of the house of the plaintiff which was located on northern side chabutra constructed in front of that latrine, through which the plaintiff-non-petitioner had the way leading to his house which has now been blocked. The learned appellate court therefore concluded that even if this question was left to be decided at the time of disposal of the suit, if newly raised constructions are allowed to stand, this would be given a leverage to a litigant who has abused the process of the law courts.

In the facts of the case, I do

not find that the learned appellate court has committed any legality in taking an approach which it has taken by directing the restoration of the same position which was existing since before or at the time of filing of the suit.

I therefore do not find any merit in this writ petition. The writ petition is dismissed.

(Mohammad Rafiq),J.

Rs/-